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UNITED
NATIONS

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Economic and Social Council

Distr.
LIMITED

E/CN.4/Sub.2/1992/L.39
25 August 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fourth session
Agenda item 11

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Draft resolution submitted by Mr. Bossuyt, Ms. Chavez, Mr. Despouy, Mr. Eide, Mr. Guissé, Mr. Hatano, Mr. Maxim and Mr. Yimer

1992/... Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

Recalling its resolution 1990/23 of 30 August 1990 in which it entrusted Mr. Louis Joinet with the preparation of a report on the independence of the judiciary,

Recalling also General Assembly resolution 45/166 of 18 December 1990 welcoming the Basic Principles on the Role of Lawyers adopted by the

Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders and inviting Governments to respect them and take them into account within the framework of their national legislation and practice,

Taking note of General Assembly resolution 46/120 of 17 December 1991 in which the Assembly, welcoming the recommendations contained in the first report of the Special Rapporteur (E/CN.4/Sub.2/1991/30 and Add.1-4) and endorsed by the Sub-Commission and also welcoming the decision of the Sub-Commission to entrust Mr. Joinet with the preparation of a further report, reaffirmed the importance of the full and effective implementation of United Nations norms and standards on human rights in the administration of justice,

Welcoming the request by the General Assembly to the Secretary-General in its resolution 46/120 to strengthen cooperation between the United Nations Centre for Human Rights and the United Nations Centre for Social Development and Humanitarian Affairs in the field of human rights in the administration of justice,

Recalling Economic and Social Council decision 1992/229 of 20 July 1992 approving Commission on Human Rights resolution 1992/33 of 28 February 1992 in which the Commission endorsed the decision of the Sub-Commission to entrust the Special Rapporteur with the preparation of a further report, as described in Sub-Commission resolution 1991/35 of 29 August 1991,

1. Takes note with appreciation of the report on the independence of the judiciary and the protection of practising lawyers, prepared by the Special Rapporteur, Mr. Louis Joinet, pursuant to Sub-Commission resolution 1991/35 (E/CN.4/Sub.2/1992/25 and Add.1);

2. Endorses the recommendations contained in the report;

3. Calls upon Governments to strengthen the independence of the judiciary and the protection of practising lawyers, as fundamental elements in the protection of human rights;

4. Decides to entrust the Special Rapporteur with a preparation of a report:

(a) To bring to the attention of the Sub-Commission information on practices and measures which have served to strengthen or to weaken the independence of the judiciary and the protection of practising lawyers in

accordance with United Nations standards. In carrying out this task, he will take initiatives with a view to, inter alia, improving contradictory procedures;

(b) To propose specific recommendations regarding the independence of the judiciary and the protection of practising lawyers to be taken into account in the advisory services and technical assistance programmes and projects of the United Nations and, in that regard, to follow up the recommendations contained in his first report (E/CN.4/Sub.2/1991/30 and Add.1-4);

(c) To examine the ways and means of enhancing cooperation and avoiding overlapping and duplication in the work of the Commission on Crime Prevention and Criminal Justice and that of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

(d) To elaborate on the recommendation contained in his report (E/CN.4/Sub.2/1992/25/Add.1);

5. Requests the Secretary-General to transmit the present resolution to Governments, intergovernmental and non-governmental organizations, including professional associations of judges and lawyers, requesting specific information on practices and measures which have served to strengthen or to weaken the independence of the judiciary and the legal profession;

6. Also requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the completion of this task;

7. Decides to consider the report of the Special Rapporteur under the agenda item entitled "Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers", at its forty-fifth session;

8. Recommends the following draft resolution to the Commission on Human Rights for adoption:

The Commission on Human Rights,

Guided by articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4 and 26 of the International Covenant on Civil and Political Rights,

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

Recalling its resolutions 1992/33 of 28 February 1992, 1991/39 of 5 March 1991, 1990/33 of 2 March 1990 and 1989/32 of 6 March 1989,

Recalling also General Assembly resolution 45/166 of 18 December 1990 welcoming the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders and inviting Governments to respect them and take them into account within the framework of their national legislation and practice,

Taking note of General Assembly resolution 46/120 of 17 December 1991 in which the Assembly, welcoming the recommendations contained in the first report of the Special Rapporteur (E/CN.4/Sub.2/1991/30 and Add.1-4) and endorsed by the Sub-Commission and also welcoming the decision of the Sub-Commission to entrust Mr. Joinet with the preparation of a further report, reaffirmed the importance of the full and effective implementation of United Nations norms and standards on human rights in the administration of justice,

Having examined the report on the independence of the judiciary and the protection of practising lawyers, prepared by the Special Rapporteur pursuant to Sub-Commission resolution 1991/35 of 29 August 1991 (E/CN.4/Sub.2/1992/25 and Add.1).

1. Welcomes the recommendations contained in the report of the Special Rapporteur (E/CN.4/Sub.2/1992/25/Add.1) and endorsed by the Sub-Commission on Prevention of Discrimination and Prevention of Minorities in its resolution 1992/... of ... August 1992.

2. Endorses the decision of the Sub-Commission to entrust Mr. Louis Joinet with the preparation of a report:

(a) To bring to the attention of the Sub-Commission information on practices and measures which have served to strengthen or to weaken the independence of the judiciary and the protection of practising lawyers in accordance with United Nations standards. In carrying out this task, he will take initiatives with a view to, inter alia, improving contradictory procedures;

(b) To propose specific recommendations regarding the independence of the judiciary and the protection of practising lawyers to be taken into account in the advisory services and technical assistance programmes and

projects of the United Nations and, in that regard, to follow up the recommendations contained in his first report (E/CN.4/Sub.2/1991/30 and Add.1-4);

(c) To examine the ways and means of enhancing cooperation and avoiding overlapping and duplication in the work of the Commission on Crime Prevention and Criminal Justice and that of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

(d) To elaborate on the recommendation contained in his report (E/CN.4/Sub.2/1992/25/Add.1);

3. Requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the completion of this task;

4. Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council, taking note of Commission on Human Rights resolution ... of ..., endorses the decision of the Commission to approve the decision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to entrust Mr. Louis Joinet with the preparation of a report on strengthening the independence of the judiciary and the protection of practising lawyers, as described in Sub-Commission resolution 1992/..., and approves the request of the Commission to the Secretary-General to give him the assistance necessary for the completion of his task."